IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

TUESDAY, THE 30TH OCTOBER 2007 / 8TH KARTHIKA 1929

FAO.No. 302 of 2007()

(AGAINST THE ORDER IN E.P. NO. 237 OF 2004, II ADDL. DISTRICT COURT, TRIVANDRUM IN O.S. NO. 136 OF 1996, SUB COURT, THIRUVANANTHAPURAM)

APPELLANTS - JUDGMENT DEBTORS:

1. **PETTAH PUTHEN KOIL BHAGAVATHY TEMPLE, PETTAH, THIRUVANANTHAPURAM, REPRESENTED BY SECRETARY, C.P. SETHUNATH.**
2. **G. GOPAKUMAR, PADMALAYAM, VANCHIYOOR, THIRUVANANTHAPURAM.**
3. **C.P. SETHUNATH, C.P. NIVAS, PETTAH, THIRUVANANTHAPURAM.**
4. **K. HARIDAS, T.C.49/963, KALIPANKULAM, MANACAUD, THIRUVANANTHAPURAM.**

BY ADV. SRI.K.RAMACHANDRAN
SRI.M.R.ANANDAKUTTAN
SMT.M.HEMALATHA

RESPONDENTS - DECREE HOLDER:

VIDHYADHARAN, S/O. CHELLAPPAN, RETD. A.E.P.W.D., RESIDING AT VIDHYA, VANCHIYOOR, THIRUVANANTHAPURAM.

BY ADV. SRI.M.C.MADHAVAN
SRI.P.RAMESAN (KANIAPURAM)

THIS FIRST APPEAL FROM ORDERS HAVING BEEN FINALLY HEARD ON 30/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. PADMANABHAN NAIR, J.

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F.A.O. NO. 302 OF 2007

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Dated this the 30th day of October, 2007

J U D G M E N T

The judgment debtors in E.P. No.237 of 2004 in O.S. No.136 of 1996 on the file of the Second Additional District Court, Thiruvananthapuram are the appellants. This appeal is filed challenging an order passed by the learned District Judge in the said E.P. by which the District Judge had issued a direction to the judgment debtors to submit a panel of 7 practicing Advocates to be considered for appointment as Receiver within 15 days.

2. Matter arises from the execution of a decree in O.S. No.136 of 1996 on the file of the Subordinate Judge's Court, Thiruvananthapuram. Copy of the judgment is produced as Annexure-1 along with this appeal. The above stated suit was tried along with O.S. No.1401 of 1995 and were disposed of by a common judgment. O.S. No.1401 of 1995 was dismissed. A direction was issued to defendants 1, 3, 4 and 5 to act strictly in accordance with the provisions of Exhibit A1 Scheme

and Exhibits B1 and B3 orders in respect of the Temple and its properties unless the Scheme is modified with the permission of the District Court. All the other reliefs sought for were rejected. The first plaintiff decree holder filed the aforesaid Execution Petition for execution of the decree alleging that the judgment debtors are violating the directions contained in the decree passed by the learned Sub Judge in the suit. Learned District Judge, after considering all aspects of the matter and also the ambit of Section 51(d) read with Order 40(1) of the Code of Civil Procedure held that a Receiver is to be appointed and directed the judgment debtors to submit a panel of 7 practicing Advocates. Challenging that decision, this appeal is filed.

3. Learned counsel appearing for the appellants submitted that the order passed by the learned District Judge is unsustainable. Learned counsel for the respondent submitted that the appellants, who are the judgment debtors, are misusing the funds and they are doing various acts which are totally inconsistent with the provisions contained in the scheme in spite of the decree. It is argued that the appellants

cannot be allowed to continue in power and for the wellbeing of the Temple a Receiver is to be appointed.

4. There are certain admitted or proved facts. The dispute centers around the administration of the Pettah Puthenkovil Bhagavathy Temple, Thiruvananthapuram. There was a suit, as O.S. No.46 of 1116 M.E. for framing a Scheme. A copy of the Scheme decree is produced by the respondent as Annexure-R1. The Scheme provides that the management of the Temple shall vest with a Committee consisting of seven seniormost male members of the seven houses (Thavazhi) and the seniormost Elasmastan. The Scheme further provides that in case any of the seniormost male member finds it difficult to discharge the office, that shall be delegated to the next Elamastan. It also provides that if there are no male members in any particular branch, that branch will have no representatives. The Scheme contains various other provisions also. Going by the original Scheme, it contemplates a Committee consisting of 14 members. It also provides that the quorum for the Committee shall be 7. The Committee shall appoint a Secretary and a Treasurer and shall

fix their tenure. The Committee can extend or reelect the Secretary or Treasurer. It further provides that Secretary shall open a Bank account and the Treasurer shall not keep more than Rs.25/- at a time in his hand, which was subsequently increased. Thereafter Exhibits B1 and B3 orders were passed increasing the number of members of the Committee. According the appellants the total number of the Committee members as per the original Scheme along with Exhibits B1 and B3 is 20. According to the respondent it can only be 14 + 2 +2 = 18. Learned counsel for the appellants submitted that that issue had already been decided and the same is no more res integra. That statement is disputed by the respondent. According to the respondent some of the members of the Committee are incompetent and ineligible to be members of the Committee as per the provisions of the Scheme and they cannot be allowed to function as members. Respondent has submitted a list of members who are eligible to be appointed as the Committee members.

5. I do not think that it is just and proper to take a final decision on the above stated disputes at this stage. At

this stage this Court is concerned with the interim arrangement to be made during the pendency of the Execution Petition. It is brought to my notice that a Civil Revision Petition is pending before this Court regarding the amendment of the existing Scheme. There are other proceedings also pending before other civil courts. Subject to the decisions that are to be taken by the competent court, I am of the considered opinion that a purely temporary arrangement for the management of the Temple is to be made during the pendency of the Execution Petition.

6. I am of the view that the 20 members of the existing Committee can be permitted to continue as the decision making body. They alone will have the right to vote and take decisions and implement the same. for the time being. I make it clear that in case the respondent want to object the continuance of any person as a member of the Committee, he shall approach the District Court for the removal of such person. In case such a petition is filed, the learned District Judge shall hear both sides and pass appropriate orders in accordance with law. It is made clear

that other members of the present Committee can participate the meetings, but they will not have any voting right and they can make only recommendations or suggestions. The Committee shall strictly follow the directions issued by this Court in the order dated 16.10.2007 in I.A. No.3807 of 2007. It is necessary to appoint a Special Commissioner to oversee the functioning of the Committee. I appoint Shri M.S.Mohanachandran, retired District Judge, as the Special Commissioner to oversee the functioning of the Committee until the District Judge takes a decision in the Execution Petition. The Secretary shall inform the convening of all meetings to the Special Commissioner. The Special Commissioner shall periodically visit the Committee Office and give appropriate directions and suggestions to the members of the Committee. The Special Commissioner shall file interim reports to the Court for issuing necessary directions to the parties. In case there is any dispute between the appellants and respondent regarding any matter in connection with the management of the Temple, they shall report the same to the Special Commissioner and the Commissioner after

hearing both sides, submit a report with his own recommendations and suggestions to the District Judge. The District Judge shall take appropriate decision in the matter in accordance with law. The interim order passed by me on 16.10.2007 regarding spending of money will continue to be in force until the Execution Petition is disposed of. The remuneration of the Special Commissioner is fixed as Rs.10,000/- per month. It is also made clear that if any amount is required for litigation expenses, the party who wants the amount can withdraw the same only after getting orders from the District Judge. Regarding the conduct of the festival of the Temple, the Committee shall act in accordance with the suggestions and under the supervision of the Special Commissioner and also subject to the orders of the court, if any.

The F.A.O. is disposed of as above.

K. PADMANABHAN NAIR, JUDGE.

vsv

K. PADMANABHAN NAIR, J.

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J U D G M E N T

30TH OCTOBER, 2007